

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007

# A Bill

HOUSE BILL 1006

4  
5 By: Representative Key  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO CREATE HEALTH OPPORTUNITY ACCOUNTS TO  
10 PROVIDE FOR AN ALTERNATIVE DELIVERY SYSTEM FOR  
11 MEDICAID SERVICES; AND FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 AN ACT TO CREATE HEALTH OPPORTUNITY  
15 ACCOUNTS TO PROVIDE FOR AN ALTERNATIVE  
16 DELIVERY SYSTEM FOR MEDICAID SERVICES.  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code Title 20, Chapter 77 is amended to add and  
22 additional subchapter to read as follows:

23 20-77-1801. Definitions.

24 As used in this subchapter:

25 (1) "Demonstration program Medicaid services" means, with  
26 respect to an individual participating in the demonstration program, services  
27 for which the individual would be provided medical assistance under the state  
28 Medicaid plan but for the application of the deductible described in § 20-77-  
29 1805(a)(1);

30 (2) "Health opportunity account" means an account that meets the  
31 requirements of this subchapter;

32 (3) "Maximum out-of-pocket cost sharing" means for an individual  
33 or family the amount by which the annual deductible applied under § 20-77-  
34 1805(a)(1) to the individual or family exceeds the balance in the health  
35 opportunity account for the individual or family;

36 (4) "Participating provider" means:



1                   (A) With respect to an individual described in § 20-77-  
2 1805(d)(1), a health care provider that has entered into a participation  
3 agreement with the state Medicaid plan for the provision of services to  
4 individuals entitled to benefits under the state Medicaid plan; and

5                   (B) With respect to an individual described in § 20-77-  
6 1805(d)(2) who is enrolled in a Medicaid managed care organization, a health  
7 care provider that has entered into an arrangement for the provision of  
8 services to enrollees of the organization under this subchapter; and

9                   (5) "State Medicaid plan" means the medical assistance program  
10 under Title XIX of the Social Security Act, as it existed on January 1, 2007,  
11 that is operated by the Department of Health and Human Services, including  
12 contractors, fiscal agents, and all other designees and agents.

13  
14                   20-77-1802. Health Opportunity Accounts for Medicaid recipients.

15                   (a)(1) Within thirty (30) days after the effective date of this  
16 subchapter, the state Medicaid plan shall apply to the Centers for Medicare  
17 and Medicaid Services for approval of a demonstration program to create  
18 health opportunity accounts as provided in 42 U.S.C. § 1398, as it existed on  
19 January 1, 2007.

20                   (2) If the Secretary of the United States Department of Health  
21 and Human Services determines that the demonstration program should be  
22 extended as a continuing program, the state Medicaid plan shall apply:

23                   (A) For an extension of the existing demonstration program  
24 as a continuing Health Opportunity Accounts program; or

25                   (B) If Arkansas has not been awarded a Health Opportunity  
26 Accounts demonstration program, for:

27                   (i) An Arkansas Health Opportunity Accounts  
28 demonstration program; or

29                   (ii) A continuing Health Opportunity Accounts  
30 program.

31                   (b) At a minimum, the demonstration program shall include provisions  
32 to:

33                   (1) Create patient awareness of the high cost of medical care;

34                   (2) Provide incentives to patients to seek preventive care  
35 services;

36                   (3) Reduce inappropriate use of health care services;

1           (4) Enable patients to take responsibility for health outcomes;

2           (5) Provide enrollment counselors and ongoing education  
3 activities;

4           (6) Provide a means for transactions involving health  
5 opportunity accounts to be conducted electronically and without cash; and

6           (7) Provide access to negotiated provider payment rates  
7 consistent with this subchapter.

8           (c) This section does not prevent the inclusion in the demonstration  
9 program of incentives for patients obtaining appropriate preventive care  
10 under 23 U.S.C § 223(c)(2)(C), as it existed on January 1, 2007, such as  
11 additional account contributions for an individual demonstrating healthy  
12 disease prevention practices.

13           (d) This section does not require that the demonstration program be  
14 implemented on a statewide basis.

15

16           20-77-1803. Eligibility -- Limitations.

17           (a) The demonstration program to create Health Opportunity Accounts  
18 shall specify the eligible population consistent with subsections (b) and (c)  
19 of this section.

20           (b) The demonstration program shall not apply to any individual who:

21                   (1) Is sixty-five (65) years of age or older;

22                   (2) Is disabled, regardless of whether or not his or her  
23 eligibility for medical assistance under the state Medicaid plan is based on  
24 the disability;

25                   (3) Is eligible for Medicaid assistance only because she is or  
26 was pregnant within the previous sixty (60) days; or

27                   (4) Has been eligible for Medicaid assistance for a continuous  
28 period of less than three (3) months.

29           (c) The demonstration program shall not apply to:

30                   (1) A pregnant woman who is required to be covered under the  
31 state Medicaid plan under 42 U.S.C. § 1396a(a)(10)(A)(i), as it existed on  
32 January 1, 2007;

33                   (2) A blind or disabled individual who qualifies for medical  
34 assistance under the state Medicaid plan on the basis of being blind or  
35 disabled or being treated as being blind or disabled without regard to  
36 whether the individual is eligible for supplemental security income benefits

1 under 42 U.S.C. § 1351 et seq., as it existed on January 1, 2007, on the  
 2 basis of being blind or disabled and including an individual who is eligible  
 3 for medical assistance on the basis of state Medicaid plan;

4 (3) An individual entitled to benefits under 42 U.S.C. § 1395 et  
 5 seq, as it existed on January 1, 2007;

6 (4) An individual who is terminally ill and is receiving  
 7 benefits for hospice care under the state Medicaid plan;

8 (5) An individual who is an inpatient in a hospital, nursing  
 9 facility, intermediate care facility for the mentally retarded, or other  
 10 medical institution and is required as a condition of receiving services in  
 11 the institution under the state Medicaid plan to spend for costs of medical  
 12 care all but a minimal amount of the individual's income required for  
 13 personal needs;

14 (6) An individual who is medically frail or an individual with  
 15 special medical needs as identified in accordance with regulations of the  
 16 state Medicaid plan;

17 (7) An individual who qualifies for medical assistance for long-  
 18 term care services described in 42 U.S.C. § 1396p(c)(1)(C), as it existed on  
 19 January 1, 2007, based on a medical condition;

20 (8) A child in foster care receiving child welfare services and  
 21 a child receiving foster care or adoption assistance under 42 U.S.C. § 620 et  
 22 seq., as it existed on January 1, 2007;

23 (9) An individual who qualifies for medical assistance based on  
 24 eligibility to receive assistance under the state Medicaid plan funded under  
 25 42 U.S.C. § 601 et seq., as it existed on January 1, 2007;

26 (10) A woman in the breast or cervical cancer program; or

27 (11) An individual who:

28 (A) Qualifies for medical assistance under 42 U.S.C. §  
 29 1396a(a)(10)(A)(ii)(XII), as it existed on January 1, 2007; or

30 (B) Is not a qualified alien as defined in 8 U.S.C. §  
 31 1641, as it existed on January 1, 2007, and receives care and services  
 32 necessary for the treatment of an emergency medical condition in accordance  
 33 with 42 U.S.C. § 1396b(v), as it existed on January 1, 2007.

34 (d) The state Medicaid plan may further limit eligibility for  
 35 participation in the demonstration program.

36 (e) For any individual who is enrolled in a Medicaid managed care

1 organization, the individual may participate in the demonstration program  
 2 only if the state Medicaid plan provides assurances satisfactory to the  
 3 Secretary of the United States Department of Health and Human Services that  
 4 the following conditions are met with respect to any Medicaid managed care  
 5 organization:

6 (1) The number of individuals enrolled in the Medicaid managed  
 7 care organization who participate in the demonstration program does not  
 8 exceed five percent (5%) of the total number of individuals enrolled in the  
 9 Medicaid managed care organization;

10 (2) The proportion of enrollees in a Medicaid managed care  
 11 organization who participate in the demonstration program is not  
 12 significantly disproportionate to the proportion of enrollees in other  
 13 organizations who participate; and

14 (3) The state Medicaid plan has provided for an appropriate  
 15 adjustment in the per capita payments to the Medicaid managed care  
 16 organization to account for participation in the demonstration program taking  
 17 into account differences in the likely use of health services between  
 18 enrollees who participate and enrollees who do not participate.

19  
 20 20-77-1804. Enrollment.

21 (a)(1) An eligible individual shall be enrolled in the Health  
 22 Opportunity Accounts demonstration program only if the individual voluntarily  
 23 enrolls.

24 (2)(A) Except in hardship cases specified by the Secretary of  
 25 the United States Department of Health and Human Services, an enrollment  
 26 shall be effective for a twelve-month period.

27 (B) However, the enrollment may be extended for additional  
 28 twelve-month periods if the enrolled individual consents to each extension.

29 (b) An eligible individual who is disenrolled from the demonstration  
 30 program for any reason shall not be permitted to reenroll in the program  
 31 before the end of the one-year period that begins on the effective date of  
 32 the disenrollment.

33  
 34 20-77-1805. Alternative benefits -- Deductible -- Rates --  
 35 Computation.

36 (a) At a minimum, the alternative benefits provided under this

1 subchapter shall consist of:

2 (1) Coverage for medical expenses in one (1) year for items and  
 3 services for which benefits are otherwise provided under the state Medicaid  
 4 plan after the annual deductible set out in subsection (c) of this section  
 5 has been met; and

6 (2) Contribution into a health opportunity account.

7 (b) Subdivision (a)(1) of this section does not prevent the state  
 8 Medicaid plan from providing for coverage of preventive care within the  
 9 alternative benefits provided under this subchapter without regard to the  
 10 annual deductible.

11 (c) The annual deductible applied under subdivision (a)(1) of this  
 12 section shall be at least one hundred percent (100%) but no more than one  
 13 hundred ten percent (110%) of the annualized amount of contributions to the  
 14 health opportunity account under § 20-77-1806(a)(1) determined without regard  
 15 to any limitation described in subdivision (a)(1) of this section.

16 (d)(1) For an individual who is participating in the Health  
 17 Opportunity Accounts demonstration program and who is not enrolled with a  
 18 Medicaid managed care organization, the state Medicaid plan shall provide  
 19 that the individual may obtain demonstration program Medicaid services from:

20 (A) Any participating provider in the state Medicaid plan  
 21 at the same payment rates that would be applicable to the services if the  
 22 deductible required under subdivision (a)(1) of this section was not  
 23 applicable; or

24 (B) Any other provider at payment rates that do not exceed  
 25 one hundred twenty-five percent (125%) of the payment rate that would be  
 26 applicable to the services furnished by a participating provider in the state  
 27 Medicaid program if the deductible described in subdivision (a)(1) of this  
 28 section was not applicable.

29 (2) For an individual who is participating in the demonstration  
 30 program and who is enrolled with a Medicaid managed care organization, the  
 31 state Medicaid program shall enter into an arrangement with the Medicaid  
 32 managed care organization under which the individual may obtain demonstration  
 33 program Medicaid services from any provider described in subdivision  
 34 (d)(1)(B) of this section at payment rates that do not exceed the payment  
 35 rates that may be imposed under subdivision(d)(1)(B) of this section.

36 (e) The payment rates under subsections (a) and (d) of this section

1 shall be computed without regard to any cost sharing that would be otherwise  
 2 applicable under 42 U.S.C. § 1396o and 42 U.S.C. § 1396o-1, as they existed  
 3 on January 1, 2007.

4 (f) Except as provided in subsections (a) and (d) of this section,  
 5 alternative benefits for an individual eligible to participate in the  
 6 demonstration program shall consist of the benefits otherwise provided to the  
 7 individual, including cost sharing relating to the benefits.

8 (g)(1) The provisions of the state Medicaid plan relating to cost  
 9 sharing for benefits including those arising under 42 U.S.C. § 1396o and 42  
 10 U.S.C. § 1396o-1, as they existed on January 1, 2007, shall not apply with  
 11 respect to benefits to which the annual deductible required under subdivision  
 12 (a)(1) of this section applies.

13 (2) The provisions of the state Medicaid plan relating to 42  
 14 U.S.C. § 1396a(a)(10)(B), as it existed on January 1, 2007, shall not apply  
 15 with respect to the provision of alternative benefits as described in this  
 16 section.

17 (h) Subject to § 20-77-1806(d), payments for alternative benefits  
 18 under this section including contributions into a health opportunity account  
 19 shall be treated as medical assistance for purposes of 42 U.S.C. § 1396b(a),  
 20 as it existed on January 1, 2007.

21 (i) The state Medicaid plan may vary the amount of the:

22 (1) Annual deductible applied under subdivision (a)(1) of this  
 23 section based on the income of the family involved so long as the variation  
 24 does not favor a family with higher income over a family with lower income;  
 25 and

26 (2) Maximum out-of-pocket cost sharing based on the income of  
 27 the family involved so long as it does not favor a family with higher income  
 28 over a family with lower income.

29 (j) This section does not prevent an employer from providing health  
 30 benefits coverage consisting of the coverage described in subdivision (a)(1)  
 31 of this section to an individual who is provided alternative benefits under  
 32 this section.

33  
 34 20-77-1806. Health Opportunity Accounts.

35 (a) No contribution may be made into a Health Opportunity Account  
 36 except for contributions by:

1           (1) The state under the state Medicaid plan; and  
 2           (2) Other persons and entities such as charitable organizations,  
 3 as permitted under 42 U.S.C. § 1396(w), as it existed on January 1, 2007.  
 4           (b) The state Medicaid plan shall specify the contribution amount that  
 5 shall be deposited into a health opportunity account under subdivision (a)(2)  
 6 of this section.  
 7           (c)(1) The state Medicaid plan:  
 8                   (A) May impose limitations on the maximum annual  
 9 contributions that may be deposited into a health opportunity account under  
 10 subdivision (a)(2) of this section;  
 11                   (B) May limit contributions into a health opportunity  
 12 account once the balance in the account reaches a level specified by the  
 13 state Medicaid plan; and  
 14                   (C) Subject to subdivisions (c)(2) and (3) of this section  
 15 and subdivision (d)(1) of this section, may not provide contributions under  
 16 subdivision (a)(1) of this section into a health opportunity account on  
 17 behalf of an individual or family to the extent the amount of the  
 18 contributions including both the state and federal shares exceeds on an  
 19 annual basis:  
 20                           (i) Two thousand five hundred dollars (\$2,500) for  
 21 each individual or family member who is an adult; and  
 22                           (ii) One thousand dollars (\$1,000) for each  
 23 individual or family member who is a child.  
 24           (2) The dollar amounts specified in subdivision (c)(1)(C) of  
 25 this section shall be increased annually by a percentage that reflects the  
 26 annual percentage increase in the medical care component of the consumer  
 27 price index for all urban consumers.  
 28           (3) The state Medicaid plan may provide for dollar limitations  
 29 in excess of those specified in subdivision (c)(1)(C) of this section as  
 30 increased under subdivision (c)(2) of this section for specified individuals  
 31 if the state Medicaid plan provides assurances satisfactory to the Secretary  
 32 of the United States Department of Health and Human Services that  
 33 contributions otherwise made to other individuals will be reduced in a manner  
 34 so as to provide for aggregate contributions that do not exceed the aggregate  
 35 contributions that would otherwise be permitted under this section.  
 36           (d)(1) The state Medicaid plan may contribute amounts under



1 subdivision (a)(2) of this section into a health opportunity account in  
 2 excess of the limitations provided under subdivision (c)(1)(C) of this  
 3 section, but no federal financial participation shall be provided under 42  
 4 U.S.C. § 1396b(a), as it existed on January 1, 2007, with respect to  
 5 contributions in excess of those limitations.

6 (2) Unless the Secretary of the United States Department of  
 7 Health and Human Services creates an exception, no federal financial  
 8 participation shall be provided under 42 U.S.C. § 1396b(a), as it existed on  
 9 January 1, 2007, with respect to any contributions into a health opportunity  
 10 account under subdivision (a)(2) of this section.

11  
 12 20-77-1807. Use of moneys in a health opportunity account.

13 (a)(1) Except as otherwise provided in this section, amounts in a  
 14 health opportunity account may be used for payment of any health care  
 15 expenditures that the state Medicaid plan specifies.

16 (2) Subject to § 20-77-1808(b)(2), a health opportunity account  
 17 may not be used for payment for health care expenditures that are not payment  
 18 of medical care as defined in 23 U.S.C § 213(d), as it existed on January 1,  
 19 2007.

20 (3) In applying subdivision (a)(1) of this section, the state  
 21 Medicaid plan may:

22 (A) Restrict payment for a provider of an item or service:

23 (i) To a provider that is licensed or otherwise  
 24 authorized under Arkansas law to provide the item or service; and

25 (ii) Insofar as the state finds that the item or  
 26 service is not medically appropriate or necessary; and

27 (B) Deny payment for a provider that is licensed or  
 28 otherwise authorized under Arkansas law if the provider has been found with  
 29 respect to the state Medicaid plan or any other health benefit program to  
 30 have failed to meet quality standards or to have committed one (1) or more  
 31 acts of fraud or abuse.

32 (b)(1) The demonstration program shall provide for a method whereby an  
 33 electronic system may be used to make withdrawals from the health opportunity  
 34 account for purposes described in subsection (a) of this section.

35 (2) The state Medicaid plan shall prohibit cash withdrawals from  
 36 the health opportunity account.

1  
2 20-77-1808. Maintenance of health opportunity account after an account  
3 holder becomes ineligible for Medicaid.

4 (a) If a health opportunity account holder of a health opportunity  
5 account becomes ineligible for benefits under the state Medicaid plan because  
6 of an increase in income or assets:

7 (1) No additional contribution shall be made into the health  
8 opportunity account under § 20-77-1806(a)(1);

9 (2) Subject to subsection (c) of this section, the balance in  
10 the health opportunity account shall be reduced by twenty-five percent (25%);  
11 and

12 (3)(A) Except as otherwise provided in this section, the health  
13 opportunity account shall remain available to the health opportunity account  
14 holder for three (3) years after the date on which the individual becomes  
15 ineligible for Medicaid benefits for withdrawals under the same terms and  
16 conditions as if the health opportunity account holder remained eligible for  
17 Medicaid benefits; and

18 (B) The withdrawals shall be treated as medical assistance  
19 in accordance with § 20-77-1805(h).

20 (b) Withdrawals from a health opportunity account under this section:

21 (1) Shall be available for the purchase of health insurance  
22 coverage; and

23 (2) Subject to subsection (d) of this section, may be made  
24 available at the option of the state Medicaid plan for additional  
25 expenditures such as job training and tuition expenses specified by the state  
26 Medicaid plan and approved by the Secretary of the United States Department  
27 of Health and Human Services.

28 (c)(1) Subdivision (a)(2) of this section does not apply to the  
29 portion of the health opportunity account that is attributable to  
30 contributions under § 20-77-1806(a)(2).

31 (2) For purposes of accounting under this section for  
32 contributions under § 20-77-1806(a)(2), withdrawals from a health opportunity  
33 account shall first be attributed to contributions described in § 20-77-  
34 1806(a)(1).

35 (d) No withdrawal may be made from a health opportunity account under  
36 subdivision (b)(2) of this section unless the health opportunity account

1 holder has participated in the Health Opportunity Account demonstration  
 2 program created in this subchapter for at least one (1) year.

3 (e) After becoming ineligible for medical assistance under the state  
 4 Medicaid plan, no health opportunity account holder is required to purchase  
 5 high-deductible or other insurance as a condition of maintaining or using the  
 6 health opportunity account.

7  
 8 20-77-1809. Administration.

9 The state Medicaid plan may coordinate administration of health  
 10 opportunity accounts through the use of a third-party administrator and  
 11 reasonable expenditures for the use of the third-party administrator shall be  
 12 reimbursable to the state Medicaid plan in the same manner as other  
 13 administrative expenditures under 42 U.S.C. § 1396b(a)(7), as it existed on  
 14 January 1, 2007.

15  
 16 20-77-1810. Treatment.

17 Amounts in or contributed into a health opportunity account shall not  
 18 be counted as income or assets for purposes of determining eligibility for  
 19 benefits under the state Medicaid plan.

20  
 21 20-77-1811. Unauthorized withdrawals.

22 The state Medicaid plan may establish procedures to:

23 (1) Penalize or remove an individual from the Health Opportunity  
 24 Account based on nonqualified withdrawals by the individual from the health  
 25 opportunity account; and

26 (2) Recoup costs that derive from the nonqualified withdrawals.

27  
 28 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
 29 General Assembly of the State of Arkansas that the federal Health Opportunity  
 30 Account program offers states new flexibility for Medicaid services; that the  
 31 new flexibility promises substantial, long-term savings to Arkansas; and that  
 32 only ten (10) states will be selected to participate in the initial Health  
 33 Opportunity Account demonstration program; and that this act is necessary  
 34 because the initial demonstration program is authorized to begin January 1,  
 35 2007. Therefore, an emergency is declared to exist and this act being  
 36 necessary for the preservation of the public peace, health, and safety shall

1 become effective on:

2 (1) The date of its approval by the Governor;

3 (2) If the bill is neither approved nor vetoed by the Governor,  
4 the expiration of the period of time during which the Governor may veto the  
5 bill; or

6 (3) If the bill is vetoed by the Governor and the veto is  
7 overridden, the date the last house overrides the veto.

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